

STATE AGRICULTURE DEVELOPMENT COMMITTEE

PUBLIC HEARING

AUGUST 23, 2010

7:00 P.M.

WASHINGTON TOWNSHIP MUNICIPAL BUILDING
43 SCHOOLEY'S MOUNTAIN ROAD
LONG VALLEY, NEW JERSEY

EMINENT DOMAIN ACTION INITIATED BY THE WASHINGTON TOWNSHIP
MUNICIPAL UTILITIES AUTHORITY ON THE PROPERTIES OF:

ROBERT SMITH, AND

HELEN SEARLES

WASHINGTON TOWNSHIP, MORRIS COUNTY

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The State Agriculture Development Committee (SADC) held a public hearing pursuant to N.J.S.A. 4:1C-19 concerning eminent domain actions filed by the Washington Township Municipal Utilities Authority (WTMUA) on farm property owned by Robert Smith, identified as Block 12, Lot 4, Washington Township, Morris County, comprising 101.8 acres, and on farm property owned by Helen Searles, identified as Block 20.10, Lot 44, Washington Township, Morris County, comprising 56.72 acres. The purpose of the condemnations, as stated in the Notices of Intent (NOIs) originally filed by the WTMUA in August 2009, was to acquire easements for community wells, well housings and piping on the Smith and Searles Farms. The hearing followed the SADC's determination at its meeting on July 22, 2010, that the proposed actions would cause unreasonably adverse effects upon the Agricultural Development Area (ADA) and State agricultural preservation and development policies.

The following members of the State Agriculture Development Committee were present at the hearing:

Stephen P. Dey;
Jane Brodhecker.

Other attendees on behalf of the SADC were:

Susan E. Craft, Executive Director;
Jason Stypinski, Esq., Deputy Attorney General;

Brian D. Smith, Esq., Chief of Legal Affairs;
Timothy A. Brill, P.P., Planning Manager.

The Washington Township Municipal Utilities Authority was represented at the hearing by:

Steven Reed, Esq.;
Fletcher Platt, Jr., P.E., Interim Executive Director;
David J. Egarian, P.E., Consulting Engineer;
Howard Popper, Alternate Member;
Sam Akin, Chairman.

The affected landowners were represented by:

Robert Smith, owner of the Smith Farm;
Joseph Grather, Esq.;

Bette Stephens, daughter of Helen Searles, owner of the Searles Farm.

Eminent Domain Action:

The WTMUA initially filed NOIs with both the SADC and the Morris County Agriculture Development Board (MCADB) in August 2009 seeking condemnation of easements on both the Smith and Searles Farms to install community wells, well housing and piping to supply additional water to its existing customers. The WTMUA provides public water and sewer services to more than 2,500 customers in Washington Township, Morris County and in a portion of Tewksbury Township, Hunterdon County. The Schooley's Mountain Water System serves about 1,500 customers (approximately 4,500 residents) in a 5 square mile service area in the northern portion of Washington Township. The easements proposed were each approximately 0.86 acres in size, consisting of a well with a 50 foot radius buffer area, a small well house and about 700 feet of associated piping within a 30 foot wide linear easement.

On or about December 30, 2009, the WTMUA also filed a complaint in the Superior Court, Law Division seeking to condemn an easement for a community well, well housing and piping on the Smith Farm, Block 12, Lot 4, 226 Drakestown Road in Washington Township. Robert Smith has contested the condemnation case, which is pending.

No condemnation complaint has been filed against the Searles Farm.

Summary of Public Testimony:

With approximately 65 people in attendance, Susan Craft opened the hearing at about 7:15 pm by reading the hearing procedures document, which included the Open Public Meetings Act compliance statement. She introduced Dr. Dey as a member of the SADC as well as the SADC staff on hand. Ms. Craft described the hearing format and purpose as well as the opportunity to submit additional written comments no later than September 10, 2010. She concluded the opening statement with a summary of the condemnation actions, the SADC's July 22, 2010 determination and the planned release of SADC findings on or before September 20, 2010 in the form of a written report.

Testimony from the WTMUA and the Affected Landowners

- Fletcher Platt, Jr., P.E., Interim Executive Director, Washington Twp Municipal Utilities Authority (46 E. Mill Road, Long Valley, NJ 07853, or his personal residence at 199 W. Spring Road, Long Valley, NJ 07853)

Fletcher Platt began by stating that, as a resident and now as the temporary Executive Director of the WTMUA, he supports farmland preservation. Since he has only been on the job for 3 weeks, he said he is still familiarizing himself with the SADC review process and the issues related to the WTMUA condemnation action. Mr. Platt indicated that there is a general awareness of the WTMUA's need for additional water supply since the demand for water on Schooley's Mountain is well documented. He went on to state that the WTMUA selected the proposed well locations based on years of scientific research. Mr. Platt said the Schooley's Mountain Water System currently relies on 9 wells that each produce between 25 and 150 gallons per minute. He indicated that the test well on the Smith Farm produces approximately 300 gallons per minute. Mr. Platt concluded by stating that the WTMUA was disappointed by the SADC's July 22, 2010 determination and that the Authority will submit additional documentation.

- Robert Smith (226 Drakestown Road, Hackettstown, NJ 07840)

As one of the landowners directly impacted by the WTMUA condemnation action, Mr. Smith used his allotted time to highlight excerpts from the following reports submitted by the WTMUA on June 8, 2010:

- The June 8, 2010 letter from David J. Egarian of D.J. Egarian & Associates, Inc., which discussed the use of transfer pumps to utilize the excess storage capacity in the existing standpipes to help meet peak demands, as well as the need to develop new water sources on the High Ridge side of the Schooley's Mountain water system.
- The July 2, 2009 New York Leak Detection, Inc. report surveying the WTMUA system conducted June 22 - 24, 2009 that documented 15 leaks estimated to total 15,600 gallons per day or 5,694,000 gallons per year.
- The February 2010 Schooley's Mountain Water System Report on Hydraulic Evaluation and System Improvements by D.J. Egarian & Associates, Inc. that

reviewed the May 2007 water shortage, identified system deficiencies, analyzed various alternatives and recommended the best options to overcome those deficiencies to provide adequate water service and fire protection. Mr. Smith stated that, at the March 11, 2010 Morris CADB meeting, Paul Costic (WTMUA Executive Director at the time) admitted that none of the recommendations had been implemented.

- The November 5, 2007 CMX Final Report (with revisions through June 2, 2008) of the Schooley's Mountain Water System Review of System Needs for Supply and Storage for the WTMUA, which emphasized the excessive water use associated with the Wooded Valley development.

Mr. Smith concluded his remarks by emphasizing the WTMUA should have properly complied with NJDEP and Highlands Council permitting requirements before initiating the condemnation process pursuant to the Water Supply Act, which requires utilities authorities to obtain an allocation permit before condemning property.

- No one from the Searles Family responded to a request for comments.

Public Comments

- Donald Barcan (79 Wehrli Road, Long Valley, NJ 07853)

Mr. Barcan asked for more due diligence by the WTMUA for area homeowners with private wells as part of the process. He felt that the WTMUA's focus seems to be on the 12 or so homeowners with excessive water demand (> 300 gallons per minute). Mr. Barcan stated that many landowners with shallow, private wells like him (125 feet deep with an output of only 5 gallons per minute), have no idea whether they are in the same aquifer as the proposed wells on the Smith and Searles properties. He ended his remarks by asking if private wells like his are impacted by the WTMUA community wells, who will pay for new wells for the affected landowners?

- John May (26 Church Road, Hackettstown, NJ 07840)

Mr. May briefly stated that the MUA should be very embarrassed by their "vulgar" actions in attempting to "steal the land" for the new wells from these landowners. He also expressed concerns about potential drawdown on the water table in the area and the impact of the WTMUA community wells on private wells.

- John Stocker (15A Spring Lane, Long Valley, NJ 07853)

John Stocker indicated that there is an existing WTMUA well less than 100 feet from his private well. He stated that there are many public property options for new wells in close proximity to both the Smith and Searles properties including public schools. He added a recommendation that the Township should put a stop to lawn watering to reduce system demand.

- Joseph Grather, Esq. (McKirdy & Riskin, P.C., 136 South Street, Morristown, NJ 07960)

As Mr. Smith's attorney, Mr. Grather provided additional comments on behalf of his client. He described the WTMUA's actions with the SADC, MCADB, New Jersey Department of Environmental Protection (NJDEP) and the Highlands Council as "aggressive." He indicated that the Superior Court condemnation hearing before Judge Bozonelis is now scheduled for October 1, 2010 and he asked that the SADC conclude this process consistent with its July 22, 2010 resolution. Mr. Grather also stated that he would be submitting additional written material to the SADC prior to the September 10, 2010 deadline.

- Rose Benson (342 Flocktown Road, Long Valley, NJ 07853)

Ms. Benson asked how she can obtain answers to her questions and if studies cited in the SADC resolution will be available to the public. She expressed her concerns over potential impacts to her shallow (85-foot deep) private well. She also found the stated potential well impacts of somewhere between 0.86 acres and 18 acres confusing. Ms. Benson concluded that she doesn't want to see any farmland lost and would much rather see the wells located on public lands if possible.

Ms. Craft responded that the less than 1-acre impact is a minimum under NJDEP community well standards while additional buffer requirements could restrict agricultural activities up to 500 feet or more from the well, potentially impacting more than 18 acres. Ms. Craft also indicated that all documents submitted by the WTMUA related to this process are available either through the SADC or the MCADB. Persons interested in obtaining copies of the studies were asked to call Jennifer McCulloch (who was identified in the hearing audience) at 973 / 829 - 8120. Ms. Benson noted the contact information for the MCADB.

- Ralph DeLia (270 Fairview Avenue, Long Valley, NJ 07853)

Mr. DeLia wanted to know why the WTMUA's rate of unaccounted for water loss was roughly 25% over the NJDEP maximum acceptable limit of 15%.

- Kriss Olsen (59 N. Four Bridges Road, Long Valley, NJ 07853)

Ms. Olsen inquired about the preservation status of the Smith Farm and whether the permanent preservation of the farm would preclude condemnation.

Ms. Craft replied that the Smith Farm application received SADC conditional Final Approval on June 24, 2010, subject to the resolution of the condemnation action against the Smith Farm by the WTMUA. Ms. Craft added that once the farm is preserved, the WTMUA would be required to obtain a declaration from the Governor that the condemnation is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative.

- Frank Speranza (71 Kim Lane, Long Valley, NJ 07853)

As a resident of "The Woods" development, Mr. Speranza stated that he has had water problems for the last 10 years, with the exception of the last 3 years due to the WTMUA seasonal water restrictions since the May 2007 incident. He claimed that more than 70 families served by the Schooley's Mountain Water System experienced serious water problems. Mr. Speranza indicated that his household lost water for 4 days in the Memorial Day crisis of 2006 or 2007, and he asked everyone involved in this review process to "do the right thing."

- Bill Wolfe (23 Gulick Road, Ringoes, NJ 08551 [West Amwell Township, Hunterdon County])

Mr. Wolfe expressed concerns with a number of issues in the July 22, 2010 SADC resolution, primarily aimed at competing water uses involving the NJDEP and the Highlands Council. He supported items 1 and 2 on page 5 of the resolution, stating that it was reckless of the WTMUA as a public agency to condemn land for new wells without addressing the unaccounted for water loss and without exploring alternatives. Mr. Wolfe asked for more clarity in the language used in items 3 and 4 that seem to undermine environmental protections with respect to agricultural use of water and pesticides. He indicated that there were serious flaws in the NJDEP water plans, allocations and permit processes and he would like to see agriculture adhere to more progressive NJDEP water conservation practices.

- Steve Bolio (183 Naughtright Road, Long Valley, NJ 07853)

Mr. Bolio felt that the WTMUA should address the 40% rate of water loss before seeking new wells. He asked for some type of mitigation or protection for private wells, stating that, should the WTMUA wells result in the private wells going dry, the landowners impacted will be without water for a lot longer than the 4 day loss experienced by WTMUA customers in 2007.

- Tom Rogers (357 Drakestown Road, Long Valley, NJ 07853)

As a local plumber and area resident for 35 years, Mr. Rogers stated that most of the existing homes in the area with relatively shallow (80 to 100 feet deep), private wells were likely to be impacted by water table drawdown if the new WTMUA wells are approved. He asked what will happen when private wells begin to go dry.

- Robert Smith (226 Drakestown Road, Hackettstown, NJ 07840)

Since no one else expressed an interest in testifying at the hearing, Mr. Smith was allowed to add comments to the record. He stated that springs on his property are the headwaters of the South Branch of the Raritan River and that they also feed Budd Lake, which is the largest body of natural water in New Jersey. Mr. Smith also called attention

to the falsified well permits for the Smith, Searles, Scheffler and Fellows properties (on file at the Morris County Planning Office) that listed the WTMUA as property owner and were signed by Paul Costic. Subsequently, at the landowners' request, NJDEP rescinded the WTMUA well permits to the Smith and Searles Farms. Because they were based on fraudulent filings, Mr. Smith indicated that he thought the WTMUA Notices of Intent should have been "thrown out completely at both the State and County levels." Robert Smith said that he did not initially object to the MUA testing for possible water on his property but he was upset when told that the buffer radius that he was originally told would only be 10 feet grew to be at least 50 feet. He claimed that water has been historically easy to find all over Schooley's Mountain and that the WTMUA was created to "make money" when the larger developers came along. Mr. Smith felt that there were numerous parcels available for wells outside the ADA in the Schooley's Mountain area including a 70-acre tract owned by "The Woods" homeowners association. He estimated that his potential financial loss, should the farmland preservation application not be completed, could be as much as \$2.5 million. The impact of an 18- to 20-acre buffer area around the proposed well could be roughly \$500,000 and the potential loss of the exception area for a future residence could be as much as \$300,000. He concluded by saying that while he was a resident of Mount Olive Township, his family has lived in the area since the 1700s.

Susan Craft adjourned the hearing at approximately 8:40 pm by stating that the SADC appreciates the input received at the hearing as well as local water concerns. She stated that additional written comments will be accepted no later than September 10, 2010 and that the report will be distributed to all those in attendance.

A transcript of the entire testimony from the public hearing can be found in the SADC's minutes of its September 17, 2010 meeting and on the SADC website.

Timeline of Events / Index of SADC and MCADB Documents:

2009

- January 7, 2009 – Robert Smith submits to the MCADB an application to preserve his farm.
- February 6, 2009 – MCADB site visit.
- February 19, 2009 - MCADB grants Preliminary Approval to Smith's farmland preservation application; MCADB letter to Robert Smith (Exhibit 1).
- February 24, 2009 – WTMUA submits to the NJDEP a Permit to Drill a Well (test well/ public community well) on the Smith and Searles Farms (Exhibit 2); Permit is granted on March 4, 2009.
- March 13, 2009 – Letter from James Gregory, WTMUA Attorney, to Robert Smith re: Property Access for Water Supply Exploration (Exhibit 3).
- March 19, 2009 - MCADB adopts revised Preliminary Approval to Smith's farmland preservation application (revised description of non-agricultural use) (Exhibit 4).

- April 8, 2009 - Letter from James Gregory, WTMUA Attorney, to Robert Smith re: Property Access for Water Supply Exploration with Access Agreement and potential Superior Court action (Exhibit 5).
- April 13, 2009 – Robert Smith and the WTMUA sign a Right-of-Entry Agreement (Exhibit 6).
- June 2, 2009 – WTMUA submits to the NJDEP a Monitoring Well Permit (3 test wells) (Exhibit 7); The permit is approved by the NJDEP on June 8, 2009.
- June 4, 2009 – WTMUA conducts a test of the well and submits Well Record to the NJDEP (date well started: May 20, 2009, date well completed: May 28, 2009) (Exhibit 8).
- June 30, 2009 – Morris CADB submits a Grant Application to the SADC for cost-share funding for the Smith Farm preservation.
- July 14, 2009 – Consent Order re: WTMUA v. Helen Searles, Superior Court (Exhibit 9).
- July 30, 2009 – Morris CADB requests a Resolution of Support for the Smith Farm preservation from Washington Township.
- August 12, 2009 – Letter from James Gregory to Judge Wilson re: WTMUA vs. Helen Searles (Exhibit 10).
- August 17, 2009 – Washington Township adopts Resolution of Support endorsing the preservation of the Smith Farm (Exhibit 11).
- August 19, 2009 – WTMUA’s “Notice of Intent” for the Smith (Exhibit 12), including the Uhl, Baron, Rana & Associates, Inc. (UBR) Final Report on the Schooley’s Mountain Water System Vertical Electrical Sounding (VES) Survey Results, dated June 18, 2008
- August 19, 2009 – WTMUA’s “Notice of Intent” for the Searles Farm (Exhibit 13).
- September 15, 2009 – E-mail from Tim Brill to Paul Costic requesting information and clarifications re: NOI in preparation for September 17, 2009 meeting (Exhibit 14).
- September 17, 2009 – T. Brill and Jennifer McCulloch meet with Paul Costic to discuss WTMUA’s NOI and the deficiencies therein. Paul Costic requests GIS data from the CADB. UBR draft Initial Well Sighting and Fracture Trace Analysis Report for the Schooley’s Mountain Water System, dated September 28, 2007 distributed (Exhibit 15).
- September 21, 2009 – Jennifer McCulloch provides all data layers needed to reflect ADA in Washington Township. Paul Costic confirms that he has received these files and that they will suffice.
- September 30, 2009 – SADC grants Green Light Approval to Smith preservation application.
- October 5, 2009 – Smith Farm appraisal site visit.
- December 11, 2009 – WTMUA letter to Robert Smith re: Offer to Purchase an easement for the construction of a new public well and associated piping (compensation offered: \$1,500) (Exhibit 16).
- December 30, 2009 – MCADB submits appraisals to the SADC for certification.
- December 30, 2009 – WTMUA files Superior Court condemnation of the Smith

Farm (Exhibit 17).

2010

- January 12, 2010 – Notice letters from CADB/SADC mailed to James Gregory, Esq. stating that the August 19, 2009 NOI for the Smith and Searles Farms received on August 24, 2009 were deficient and did not meet the requirements of N.J.A.C. 2:76-7.1, et seq., and requesting additional information (Exhibit 18).
- January 22, 2010 – MCADB submits appraisals to Robert Smith.
- January 26, 2010 – Letter from James Gregory to SADC/MCADB in response to January 12, 2010 Notice providing updated information re: NOI for the Smith and Searles farms, including the UBR Final Report on the Schooley's Mountain Water System Vertical Electrical Sounding (VES) Survey Results, dated June 18, 2008, technical responses to Timothy Brill's September 15, 2009 e-mail message, the UBR Initial Well Sighting and Fracture Trace Analysis Report for the Schooley's Mountain Water System, dated September 28, 2007, copies of the August 19, 2009 NOIs for the Smith and Searles Farms, the UBR Additional Lineament Analysis for the Schooley's Mountain Water System dated October 9, 2008, and preliminary maps (Exhibit 19).
- February 17, 2010 – MCADB notice letter mailed to James Gregory, Esq. stating that the NOI received on January 28, 2010 was deficient and did not meet the requirements of N.J.A.C. 2:76-7.1, et seq., and requesting additional information (Exhibit 20).
- February 17, 2010 – Letter from James Gregory to Judge Bozonelis requesting that the date of the Order to Show Cause in the Smith condemnation action be adjourned until the week of April 26, 2010 to allow the SADC and the MCADB to review the NOI (Exhibit 21).
- February 23, 2010 – Letter from Katherine Coyle to James Gregory inviting the WTMUA to the MCADB's March 11, 2010 meeting during which the NOI would be reviewed (Exhibit 22).
- March 2, 2010 - Updated "Notice of Intent" for the Smith and Searles Farms from James Gregory to Frank Pinto, Director, Morris County Department of Planning and Development, in response to the MCADB's letter of February 17, 2010, including an internal memorandum from Paul Costic to Jim Gregory, dated March 1, 2010 (Exhibit 23).
- March 2, 2010 – Letter from SADC to James Gregory stating that the NOI for the Smith and Searles Farms was deficient and did not meet the requirements of N.J.A.C. 2:76-7.1, et seq., and requesting additional information (Exhibit 24).
- March 8, 2010 – Letter from James Gregory to SADC in response to SADC's March 2, 2010 letter (Exhibit 25).
- March 9, 2010 - Letter from Robert Smith to NJDEP requesting cancellation of well permits (Exhibit 26).
- March 10, 2010 – MCADB Staff Report prepared for March 11, 2010 meeting (Exhibit 27).
- March 11, 2010 – E-mail from Timothy Brill to Katherine Coyle containing a "preliminary" response from the NJDEP (Exhibit 28).

- March 11, 2010 – E-mail from Steven Pudney (NJDEP) to SADC and CADB re: applicable NJDEP regulations (Exhibit 29).
- March 11, 2010 – Letter from Bob Smith to NJDEP requesting the NJDEP to rescind well permits (Exhibit 30).
- March 11, 2010 – MCADB reviews NOI at regularly-scheduled meeting with James Gregory, Esq., Paul Costic, Sam Akin, and Robert Smith present; MCADB determines that the project would cause “unreasonably adverse effects” and schedules a Public Hearing.
- March 16, 2010 – Notice letter mailed to James Gregory re: MCADB’s determination of adverse effect and re: Public Hearing scheduled (Exhibit 31).
- March 22, 2010 – Letter from James Gregory to SADC in response to SADC’s March 2, 2010 request for updates to the NOI, including technical responses to specific questions, maps, WTMUA rate schedule for water and sewer user fees and 2009 Schooley’s Mountain water restrictions (Exhibit 32).
- March 26, 2010 – SADC certifies Smith Farm appraisals.
- March 29, 2010 – Letter from NJDEP to SADC re: water diversions and permitting in the Highlands Preservation Area (Exhibit 33).
- March 29, 2010 – E-mail from Eileen Swan, Highlands Council Executive Director to SADC re: WTMUA condemnation for new wells and the Highlands Regional Master Plan Consistency Determination process (Exhibit 34).
- April 1, 2010 – MCADB grants final approval to Smith’s farm preservation application (Exhibit 35).
- April 8, 2010 – Letter from Pat Bono (NJDEP) to Richard Stothoff (well driller) informing him and the WTMUA that the DEP rescinded all permits for the Smith Farm well (Exhibit 36).
- April 14, 2010 – Letter from Joseph Grather to Judge Bozonelis requesting an adjournment of the Order to Show Cause hearing scheduled for April 30, 2010 to allow the MCADB and SADC review of the NOI and to accommodate the associated public meetings (Exhibit 37).
- April 16, 2010 – Letter from SADC to WTMUA stating that the NOI is still deficient and requesting additional information (Exhibit 38).
- April 26, 2010 – Morris County Freeholders grant final approval to Smith’s farmland preservation application (Exhibit 39), with Executed Agreement to Sell Development Easement between Robert Smith and Morris County (Exhibit 40).
- April 30, 2010 – Answer filed on behalf of Robert Smith, WTMUA v. Robert Smith, Law Division, Superior Court (Exhibit 41).
- May 3, 2010 – Final Approval packet submitted to the SADC for preservation of Smith Farm.
- May 3, 2010 – Legal Notice of the MCADB Public Hearing (Exhibit 42).
- May 5, 2010 – Affidavit of Publication for May 10, 2010 Public Hearing (Exhibit 43).
- May 5, 2010 – Letter to NJDEP from Helen Searles requesting well permit be rescinded (Exhibit 44).
- May 10, 2010 – MCADB Public Hearing Procedures and Determination (Exhibit 45).

- May 14, 2010 – Copy of letter received from Pat Bono (NJDEP) to Richard Stothoff (well driller) informing him and the WTMUA that the NJDEP rescinded the well permit for the Searles Farm (Exhibit 46).
- June 10, 2010 – MCADB Resolution re: Eminent Domain Action in an ADA Initiated by the WTMUA on the Smith and Searles Farms (Exhibit 47).
- May 13, 2010 – Letter from James Gregory to Susan Craft in response to the SADC's April 16, 2010 request for additional information, asking for additional time to comply (Exhibit 48).
- June 1, 2010 – Copies of Highlands Council e-mail messages between Dan Van Abs and James Gregory dated April 6, 2010 with copy of 2006 NJDEP Water Allocation Permit for the WTMUA dated February 23, 2006 received from Robert Smith (Exhibit 49).
- June 8, 2010 – Letter from James Gregory to SADC in response to SADC's April 16, 2010 request for updates to the NOI, with the following attachments (Exhibit 50):
 - Internal Memorandum from Paul Costic to the MUA Committee, dated June 7, 2010
 - New York Leak Detection Survey Report (survey conducted June 22-24, 2009), dated July 2, 2009
 - CMX Final Report on the Schooley's Mountain Water System Review of System Needs for Supply and Storage for the WTMUA, dated November 5, 2007 with revisions on December 14, 2007 and June 2, 2008
 - Letter from David J. Egarian of D.J. Egarian & Associates, Inc. to Paul Costic re: Development of New Wells in the High Ridge Service Area, dated June 8, 2010
 - D.J. Egarian & Associates, Inc. Schooley's Mountain Water System Report on Hydraulic Evaluation and System Improvements, dated February 2010
- June 22, 2010 – Letter from Susan Craft to James Gregory stating that the NOI submittals have been deemed complete and will be reviewed by the SADC at its July 22, 2010 meeting (Exhibit 51).
- June 24, 2010 – SADC Resolution re: Final Review and Conditional Approval of a Planning Incentive Grant to Morris County for the Purchase of a Development Easement on the Smith Farm (Exhibit 52).
- July 2, 2010 – Excerpts from various NJDEP documents including 2007 and 2009 WTMUA Conservation Plans, regulations, and water allocation permits faxed from Jan Gheen, NJDEP Bureau of Water Allocation Section Chief, to Timothy Brill (Exhibit 53).
- July 6, 2010 - Letter from Joseph Grather to Judge Bozonelis objecting to plaintiff's request to adjourn the Order to Show Cause hearing in the WTMUA condemnation action against Robert Smith (Exhibit 54).
- July 12, 2010 – Helen Searles Petition for Creation of a Municipally Approved Farmland Preservation Program for the Searles Farm (Block 20.10, Lot 44) (Exhibit 55).
- July 22, 2010 – SADC Resolution re: Review of Non-Agricultural Development Projects in an ADA, WTMUA Eminent Domain Action on the Smith and Searles

- Farms (Exhibit 56).
- July 26, 2010 – Notice letter from Jason Stypinski, Esq., DAG, to James Gregory re: SADC’s determination of adverse effects and directing the WTMUA to take no action on the condemnation for 60 days (Exhibit 57).
 - July 29, 2010 – Letter from Joseph Grather to Judge Bozonelis objecting to further adjournments of the Order to Show Cause in the WTMUA condemnation action against Robert Smith (Exhibit 58).
 - August 3, 2010 – Letter from Jason Stypinski, Esq., DAG, to Judge Bozonelis requesting that the return date for the condemnation hearing be adjourned for 60 days to allow the SADC to complete the statutory NOI review process (Exhibit 59).
 - August 4, 2010 – Letter from James Gregory to Joseph Grather confirming that the Order to Show Cause hearing has been adjourned until October 1, 2010 (Exhibit 60).
 - August 12, 2010 – MCADB Resolution Determining Completeness of Helen Searles Municipally Approved Farmland Preservation Program Petition and forwarding a copy of the Petition to the Morris County Planning Board and the Governing Body and Planning Board of Washington Township for concurrence (Exhibit 61).
 - August 17, 2010 – Legal Notice of SADC Public Hearing (Exhibit 62).
 - August 23, 2010 – SADC Public Hearing Procedures and Determination on the Proposed Condemnations within an ADA on the Smith and Searles Farms (Exhibit 63).
 - September 7, 2010 – Letter from Joseph Grather to SADC Executive Director Susan Craft re: Pleadings filed challenging the WTMUA’s authority to take Robert Smith’s private property through exercise of eminent domain (Exhibit 64).
 - September 8, 2010 – Letter from Robert Smith to Timothy Brill highlighting excerpts from various documents for SADC consideration (Exhibit 65).
 - September 10, 2010 – Letter from James Gregory to SADC summarizing WTMUA’s post-hearing comments, including an Overview of the WTMUA’s Response to the Farm Boards’ Objections, a Schooley’s Mountain Water Utilization Analysis for the period from January through June 2010, and a map of the High Ridge and Naught Service Areas (Exhibit 66).

Findings:

The SADC finds the WTMUA's planned eminent domain actions would have unreasonably adverse impacts on Morris County's ADA and State agriculture preservation and development policies for the following reasons:

1. NJDEP records indicate that the WTMUA has been operating the Schooley's Mountain Water System with a growing and unacceptably high rate of unaccounted water loss approaching 40% of the system's production, which is well above the NJDEP standard acceptable maximum limit of 15%. Even in light of the progress the WTMUA has made in recent years to find and repair leaks (as indicated in Tables II and III of the Water Utilization Analysis from January through June 2010 for the WTMUA Schooley's Mountain Water System submitted with the WTMUA's post hearing responses on September 10, 2010), the Authority's unaccounted for water loss is 25%, still more than 10% above the NJDEP acceptable maximum limit.
2. The WTMUA has not adequately demonstrated through its limited analysis of alternatives which would not include action in the ADA that a combination of water distribution system improvements, reductions in the system's rate of unaccounted for water loss and additional wells outside the ADA, including the new well on the Scheffler property (which produces about 125 gallons per minute), could address the water needs of affected customers in the Schooley's Mountain area. The December 14, 2007 CMX report entitled Schooley's Mountain Water System Review of System Needs for Supply and Storage for the WTMUA established a 146 gallon per minute deficit in the system's capacity to meet peak demands, based on the "Firm Source Capacity" definition in the NJDEP Safe Drinking Water Act regulations (N.J.A.C. 7:10-11.4(a)). The Schooley's Mountain Water Service Area is approximately 3,211 acres in area, of which only 68 acres or 2.1% of the total area is contained in the Morris County ADA. SADC staff have carefully reviewed all of the hydrogeological and professional engineer reports provided by the WTMUA and concluded that the information strongly suggests that the deficit in the Schooley's Mountain Water System network of wells can be addressed by the WTMUA's new well on the Scheffler property, reductions in the system's rate of unaccounted for water loss and/or other wells in locations outside the very limited number of acres in the Morris County ADA but within the Water Service Area, as shown on the attached map.
3. The community wells have the clear potential to impact the existing and future agricultural activities on both the Smith and Searles Farms beyond the fifty (50) foot radius buffers, pipe easements and well houses described in the WTMUA's NOI, including limitations on the use of new wells or ponds for agricultural irrigation; application of fertilizers, pesticides and herbicides; and the construction of fuel storage facilities and septic systems. Further, potential additional buffer requirements of up to 500 feet or 200 days time of travel (whichever is greater)

will restrict, if not prohibit, livestock operations and other activities on the farms classified as major pollutant sources pursuant to NJDEP regulations (N.J.A.C. 7:10-11.4 and N.J.A.C. 7:10-11.7).

4. Depending on the ultimate size of the required well buffer area, the proposed community wells on the Smith and Searles Farms will also have the potential to negatively impact the viability of other nearby farms in the Morris County ADA, including more than 800 acres adjacent to the Smith Farm in Mount Olive Township. Furthermore, the two permanently preserved farms immediately adjacent to the Smith Farm (Fellows and Burd Farms) and the permanently preserved Plut Farm, which is approximately 700 feet from the Searles Farm, where the public has already invested significant funding to preserve the opportunity for a variety of agricultural uses in perpetuity, may also be affected.
5. The WTMUA initiated its action to develop wells on the Smith and Searles Farms in violation of the Agriculture Retention and Development Act (N.J.S.A. 4:1C-19). Clearly, the WTMUA should have completed the SADC and MCADB review process before applying for NJDEP permits, drilling a test well on the Smith Farm and filing for condemnation of a portion of the Smith Farm. The ADA review process set forth in the Act was created for the specific purpose of requiring proper due diligence and alternatives analysis before the construction of public infrastructure in the ADA. Disregard for this process has the effect of frustrating the legislature's intent to protect agriculturally viable areas of the state from unnecessary non-agricultural development, and may lead to wasteful expenditure of taxpayer, or ratepayer, funds where such premature investments are later reversed.
6. The WTMUA misrepresented its interest in the Smith, Searles and Fellows Farms when filing NJDEP permit applications without proper landowner consent or authorization. This misrepresentation led to the issuance, and subsequent rescission of, NJDEP well drilling permits on the Smith and Searles farms. Any deliberate misrepresentation of facts by public agencies should not and cannot be tolerated in this process, or any such governmental review process, as it breeds disrespect for the law and mistrust of the public.

Recommendations:

The Legislature has repeatedly recognized the importance of agriculture in New Jersey and has made the retention of the agricultural industry a high public priority in the Right to Farm Act, the Agriculture Retention and Development Act, and the Garden State Preservation Trust Act:

See N.J.S.A. 4:1C-2 legislative finding that “[t]he retention of agricultural activities would serve the best interest of all citizens of this State by insuring the numerous social, economic and environmental benefits which accrue from one of the largest industries in the Garden State. . . ;

N.J.S.A. 4:1C-12 legislative finding that “[t]he strengthening of the agricultural industry and the preservation of farmland are important to the present and future economy of the State and the welfare of the citizens of the State. . . .”; and

N.J.S.A. 13:8C-2 legislative finding that “agriculture plays an integral role in the prosperity and well-being of the State as well as providing a fresh and abundant supply of food for its citizens; that much of the farmland in the State faces an imminent threat of permanent conversion to non-farm uses; and that the retention and development of an economically viable agricultural industry is of high public priority.

As such, it is imperative that the ADA review process as set forth in the Act results in meaningful and tangible actions designed to address the impacts the proposed taking is likely to have. To that end, the SADC offers the following recommendations with regard to this matter:

1. Require the WTMUA to exhaust all other water supply options prior to consideration of new wells on the Smith and Searles farms.

Upon full consideration of all testimony and evidence, the SADC recommends that the WTMUA be required to pursue a combination of water distribution system improvements, reductions in the system’s rate of water loss, enforcement of additional water conservation restrictions and additional wells outside the ADA, including the well on the Scheffler property, and any other reasonable action to address the water needs of affected customers in the Schooley’s Mountain area prior to the issuance of any additional well drilling or water supply permits. The SADC concludes that the wells proposed by the WTMUA on the Smith and Searles Farms may be a convenient response to the Authority’s challenge to provide safe and adequate water to its customers, but the wells do not appear to be necessary to meet current demands for water. Furthermore, the projected future demands of the water system are not expected to be significantly higher than existing demands due to development restrictions imposed through the Highlands Water Protection and Planning Act which identified the entire Schooley’s Mountain Service Area as part of the Preservation Area.

2. Include ADA review process in pertinent DEP permit procedures.

Upon learning that the WTMUA secured drilling permits prior to compliance with the ADA review process as set forth in the Act, NJDEP was instrumental in assisting SADC in evaluating the NOIs submitted and in improving the SADC's understanding of the technical and procedural requirements of the NJDEP's water supply permit programs. However, the WTMUA's ability to obtain well permits and drill a test well in an ADA prior to compliance with the provisions of N.J.S.A. 4:1C-19 demonstrates the need to better integrate the ADA review process within the applicable permit review procedures within NJDEP. Had NJDEP been aware of the ADA review process, it could have required the permit applicant to prove compliance with the Act prior to issuing permits.

In addition, the SADC suggests that the NJDEP evaluate its current procedures and regulations to ensure that permit applications contain proper landowner authorization, and that the applications are accompanied by proper documentation evidencing such landowner authorization. For example, applicants claiming to be the landowner should be required to provide a copy of the property deed in the applicant's name, and applicants relying on permission from a landowner should have to submit a fully executed agreement or other notification of such permission.

3. Expedite conclusion of the matter so as to not unduly interfere with preservation of the Smith and Searles farms in the New Jersey Farmland Preservation Programs.

The SADC encourages all parties involved in the review of these proposals to expedite the process to enable the permanent preservation of the Smith Farm and the enrollment of the Searles Farm in the Municipally Approved Eight Year Farmland Preservation Program. With considerable demand on the limited State funding available for farmland preservation at present, it is more important than ever that farmland preservation opportunities are completed as quickly as possible.

This report was adopted by the State Agriculture Development Committee at a public meeting held on September 17, 2010.